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8
9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11

12 VIRGINIA PELLEGRINI, Trustee of the
13 Mario J. and Virginia E. Pellegrini Trust,
and VIRGINIA PELLEGRINI, an
14 individual,

15 Plaintiffs,

16 v.

17 TECHNICHEM, INC., a California
corporation, MARK J. NG, an individual;
18 STEPHEN S. TUNG, an individual;

19 Defendants.
20

Case No. 07-CV-02497-CRB

**PLAINTIFFS' DECLARATION
REGARDING DTSC ENFORCEMENT
ACTIONS AGAINST DEFENDANTS FOR
SITE INVESTIGATION AND
REMEDATION**

Date: November 30, 2007
Time: 8:30 am
Courtroom: 8, 19th floor
Judge: Honorable Charles R. Breyer

21 Plaintiffs submit the following exhibits, attached to the Declaration of William D.
22 Wick below, in accordance with the Court's Order following the Case Management
23 Conference on October 26, 2007.

24 The exhibits are documents reflecting enforcement actions taken by the California
25 Department of Toxic Substances Control in that agency's efforts to get Defendants to
26 perform a site investigation and cleanup on Plaintiffs' property at 4245 Halleck Street in
27 Emeryville, California ("the Property").
28

DECLARATION OF WILLIAM D. WICK

I, William D. Wick, hereby declare:

1. I am a partner of Wactor & Wick LLP, the attorneys of record for Plaintiffs Virginia Pellegrini and Virginia Pellegrini, Trustee of the Mario J. and Virginia E. Pellegrini Trust.

2. Attached as Exhibits 1 through 4 are true and correct copies of documents relating to enforcement actions taken by the Department of Toxic Substances Control (DTSC) relating to DTSC's efforts to get Defendants to perform the investigation and remediation of the Property:

Exhibit 1: DTSC Summary of Violations dated May 7, 1998

DTSC inspected Defendants' operations in 1998 and prepared this summary of Defendants' violations of the Hazardous Waste Control Law.

Exhibit 2: Motion to Enforce Partial Consent Decree and Seek Penalties

On November 13, 2002, DTSC filed a Motion to Enforce Partial Consent Decree and Seek Penalties for violations occurring between October 2000 and May 2002.

Exhibit 3: Stipulated Final Judgment

On December 17, 2003, DTSC filed a Stipulated Final Judgment against Technichem, Inc. and Mark Ng. The Final Stipulated Judgment required Technichem to:

- Close its facility and implement facility corrective action [¶5];
- Submit a site investigation work plan to DTSC that investigates areas on and around the facility that were potentially impacted by Technichem's operations [¶5(a)];
- Implement the Facility Closure Workplan within 14 days of DTSC's approval of the Workplan [¶5(c)];

- Submit an amended closure plan that will address closure of the facility, as well as any other areas needing remediation as identified by the work plan results [¶5(d)]; and
- Submit to DTSC proof of adequate financial assurance for closure within 30 days of DTSC's approval of Technichem's amended closure plan [¶5(f)].

Exhibit 4: DTSC News Release (January 8, 2004)

DTSC issued a news release about the Court's approval of the Stipulated Final Judgment, which required Technichem to cease operations and to investigate and clean up the contamination.

3. Despite the enforcement actions and the Stipulated Final Judgment, Defendants have not completed the investigation and cleanup on the Property. Plaintiffs filed this action in federal court to compel Defendants to complete the investigation and cleanup of the Property, pursuant to Defendants' contractual obligations under the lease, and pursuant to federal environmental statutes which explicitly authorize such lawsuits and explicitly provide for injunctive relief, recovery of costs, and attorneys' fees as statutory remedies.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 9, 2007 in Oakland, California.

WACTOR & WICK LLP

By: 

WILLIAM D. WICK

Attorneys for Plaintiffs
Virginia Pellegrini, and
Virginia Pellegrini, Trustee of the Mario J.
and Virginia E. Pellegrini Trust